Appendix.

UNIFICATION STATUTE

Article VII, New York Public Service Law

§ 122. *Definitions.*

When used in this article, unless the context in relation to the subject-matter clearly indicates that another meaning is intended:

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2. The word "commission," means the metropolitan division of the department of public service formerly known as the transit commission;

3. The word "board," means the board of transit control;†

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6. The words "local authority," shall include the board of estimate and apportionment and any other analogous local authority in such city having control of streets or authority to make appropriations;

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10. The word "plan" shall mean a plan and agreement of unification and readjustment made in accordance with the provisions of this article;

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13. The word "may" is always to be construed as permissive in character, and not mandatory or directory, as to any action or function to which it is related in the text;

14. The word "shall" is always to be construed as mandatory except when used as a synonym for the word "will" indicating a future tense. * * *

§ 123. *Commission to prepare plan*

1. The commission after making the necessary studies and investigation shall prepare a plan or plans for the relief of the emergency which is hereby declared to exist, and for the improvement of transit in any such city. Such plan shall contain provisions which in the judgment of the commission, will accomplish as nearly

† The Unification Plan might have provided for the vesting of titles to the properties in a board of transit control, but this device was not included in the Plan. The definition of "board" is included above, however, because the board is referred to from time to time in the provisions of the statute which are here quoted.

as may be the following purposes: (1) the acquisition and unification, under public ownership or control, of railroads and other transit facilities, by purchase and direct conveyance or transfer, or by lease, recapture, assignment of lease, modification or extinguishment of existing contract or contracts, * * * or partly by one of such methods and partly by one or more of the others, so that service thereon may be increased, extended and improved to the fullest extent possible, (2) the receipt as soon as practicable by the city of net revenues from the operation of the railroads which will be applicable to the payment of interest and amortization charges on corporate stock or bonds of the city after deduction of all expenses of maintenance and operation, reserves for depreciation and otherwise, interest and amortization charges and other deductions as may be provided in a plan or in any contract or lease made in pursuance of its provisions, and (3) the assuring to the people of the city the continued operation of the railroads at the present or lowest possible fares consistent with their safe and economical operation and the performance by the board of its obligations under any plan and under any lease or contract made in pursuance of its provisions. * * *

2. * * * Without limiting the authority and discretion of the commission, it may consider the incorporation in the plan of provisions whereby the title to such railroads as are not already owned by the city and whose ownership thereby is deemed by the commission to be desirable may be vested in the city and whereby rights under existing contracts for the construction, equipment and operation of rapid transit railroads already owned by the city may be acquired by the city. * * * In the event of the incorporation of such provisions in the plan the commission shall outline an arrangement whereby outstanding securities of the railroad companies may be retired either by application of the amounts paid by the city for the railroads acquired or through the issue of bonds of the board, or in part by one method and in part by the other, and whereby such bonds or other securities may be amortized or otherwise paid. * * *

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4. Valuations. In connection with the preparation of any plan the commission shall cause a valuation or valuations to be made of the railroads, properties and interests therein, including leases and leasehold interests and outstanding contracts the assignment to or cancellation of which by the city may be deemed advisable but excluding franchises and going value, of the railroad company or railroad companies it proposes to include therein. Any such valuation including the value of contracts acquired may be in such detail and include such elements of cost or value and be made in such manner as the commission may from time to time determine and prescribe, with due regard to the past, present and estimated prospective earnings of such railroads, properties and interests at the rate or rates of fare that the railroad company or railroad com-

panies prior to the taking effect of this act were entitled to charge under the provisions of the contracts or franchises under which such properties are operated or held or of any lawful order then in force fixing or regulating rates of fare, or under existing law, and in view of the competition of other lines and with due regard to all other pertinent facts and conditions; but such valuation shall not in any case exceed the fair reproduction cost of such properties less depreciation, and, in the case of leasehold interests and contracts to be assigned, acquired or cancelled, the fair value of any such leaseholds and contracts. Any such valuation as finally determined by the commission may be the basis for the inclusion of such railroads, properties, contracts and interests in the plan and for fixing the allowances and returns on account thereof under the plan and under any leases or contracts made in pursuance of its provisions.

* * *

6. Board of transit control. Rapid transit railroads and other transit facilities, as defined in section one hundred and twenty-two hereof, being a part of the public streets and highways necessary for the convenience, health and welfare of the public at large and essential for the protection of the state in time of emergency, are and are hereby declared to be matters of state interest and concern. * * *

* * *

10. Body politic and corporate. The board when organized shall be a non-profit sharing body politic and corporate instrumentality for the purpose of engaging in an essential governmental function, * * * and its purposes are and are hereby declared to be essential to the public welfare and interests of the state. * * *

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§ 124. *Procedure under plan*

1. Upon the completion of such plan, but before finally adopting the same, the commission shall hold a public hearing thereon at which citizens shall be entitled to appear and be heard and shall transmit a copy thereof to the local authority of the city and to each of the railroad companies which owns, leases or operates any of the railroads included therein, with a request for the statement of the views of such local authority and such railroad companies thereon. Such local authority and such railroad company or railroad companies may transmit such views and be heard thereon within a period of time to be prescribed by the commission. Thereafter the commission from time to time may make such changes in or modifications of such plan as the commission in its discretion may deem to be advisable.

The commission shall then formally adopt the plan and call upon each of the railroad companies which owns, leases or operates any of the railroads included therein or whose leasehold, contract

or other interests are to be acquired to inform it within a period of time to be fixed by the commission whether it accepts such plan.

Any such plan as formally adopted by the commission may provide that the commission, with the approval of the local authority, shall determine from time to time whether and when a sufficient amount of the securities to be adjusted have been deposited under or have otherwise assented to the plan to render it advisable to declare the plan operative, and in such latter event the plan shall not be or become operative until so declared by the commission with the approval of the local authority. If the railroad companies or one or more of them do so accept, or if in the judgment of the commission a sufficient number of them so accept as to justify carrying out the plan, and if the local authority also approves the plan, and the plan is or is declared operative in accordance with its terms, the local authority shall take all such action or actions as may be necessary or convenient to carry out the plan. All deeds, assignments or surrenders of leaseholds and contracts and other interests, leases, mortgages, contracts and other documents shall be approved by the commission.

* * *

9. Consummation of plan. After the approval of such plan, as provided in this section, and thereupon, if the plan is or is declared to be operative in accordance with its terms, the local authority may consummate the transaction by the execution and delivery of the deeds of conveyance and instruments of transfer, lease or leases, mortgage or mortgages, contracts and all other instruments and documents, necessary or advisable for carrying the plan into effect which shall be approved by the commission.

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12. Securities acquired by city. If, pursuant to a plan, the city shall become the owner or holder of securities of a corporation owning the railroads to be acquired under the plan, or the securities of a corporation holding the securities of such owning corporation, or securities to which such railroads are subject, such securities shall be delivered into the custody of the comptroller of the city. The city, acting by the local authority or by such person or persons as the local authority may designate, may exercise such powers with respect to such securities as might any other holder hereof. * * *

§ 125.

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4. Issue of corporate stock or serial bonds. (a) The local authority is authorized and empowered from time to time to authorize the issuance of corporate stock or serial bonds of the city for the acquisition of railroads, or any portion thereof, including the acquisition of facilities and properties used in connection therewith, rights therein, securities of corporations owning such

railroads, facilities, properties or rights, securities of corporations holding the securities of such owning corporations and securities to which such railroads, facilities, properties or rights are subject, whether or not including the acquisition of land in connection therewith, which shall be included in a plan and the title to which shall be vested in the city as provided in this article * * *.

* * *

5. Expenses in formulating plan. The local authority is further empowered to authorize the issuance and sale of tax notes, corporate stock or serial bonds and to use the proceeds thereof for the payment of expenses necessarily incurred by the city, the commission or the board in the preparation, adoption and execution of a plan, including the preparation of the mortgages, bonds and other documents and the securing of consents and approvals of security holders and otherwise, the expenses of the commission to be paid upon the requisition and certificate of the chairman or acting chairman of the commission. * * *

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§ 129. *Approval of contracts to effectuate plans*

Anything contained in this article to the contrary notwithstanding, neither the commission nor the board shall execute and deliver any plan, or any lease or leases thereunder, without obtaining the consent and approval of the local authority of such city. * * *